

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE  
SECURITIES DIVISION**

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**IN THE MATTER OF:**

**FRANK HOWARD ZITO**

**ADMINISTRATIVE CONSENT  
ORDER LS-18-3126**

**Respondent**

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**CONSENT ORDER**

**WHEREAS**, the Securities Division of the Mississippi Secretary of State ("Division"), having the authority to administer and provide for the enforcement of all provisions of the Mississippi Securities Act ("Act") codified at Mississippi Code Annotated Sections 75-71-101, et. seq.;

**WHEREAS**, the Division received and investigated a complaint against Respondent;

**WHEREAS**, Respondent has cooperated with the Division's investigation by responding to inquiries, making himself available for interviews, and providing the Division with access to facts relating to the investigation;

**WHEREAS**, Respondent has advised the Division of his agreement to resolve the matter without the expense and delay that formal proceedings would involve;

**WHEREAS**, Respondent elects to permanently waive any right to a hearing and appeal under the Act in Sections 75-71-604 and 75-71-609; and

**WHEREAS**, Respondent, admits the jurisdictional allegations and agrees to take certain actions described herein and consents to the terms and conditions of this Administrative Consent Order ("Order"). Neither this Order nor any acts performed nor documents executed in furtherance of this Order are intended for use by any person or entity not a party to this proceeding as an admission of, or evidence of, any fault or omission of Respondent in any civil, criminal, or

administrative proceeding in any court, administrative agency, or other tribunal. This Order is not intended to confer any rights upon any person or entities who are not a party to this proceeding;

**NOW, THEREFORE**, the Division, as Administrator of the Act, hereby enters this Order:

## **I. FINDINGS OF FACT**

1. Respondent admits the jurisdiction of the Division in this matter.

### **Parties**

2. The Secretary of State has the authority pursuant to the Act to administer and enforce the Act and regulate the offer and sale of securities in Mississippi including the firms and persons who offer or sell securities or who provide investment advice regarding securities.

3. Respondent is an individual with a residence at 908 Cardigan Street, in Madison, Mississippi. The Central Registrations Depository ("CRD") number for Respondent is 2766336.

4. From February 14, 2000 to February 13, 2007, Respondent was registered with the Division as a broker-dealer agent for AmSouth Bank. From March 3, 2003 to February 13, 2007, Respondent was also a registered investment adviser representative for AmSouth Investment Services.

5. From February 13, 2007 to March 8, 2010, Respondent was employed by Morgan Keegan & Company and registered with the division as a broker-dealer agent and investment adviser representative.

6. From March 8, 2010 to June 25, 2018, Respondent was employed by Merrill Lynch, Pierce, Fenner & Smith ("Merrill") and registered with the Division as a broker-dealer agent and investment adviser representative.

## Events

7. While employed by AmSouth Investment Services in 2006, Respondent began an adviser-client relationship with RF, an investor who filed the complaint with the Division giving rise to this action. RF also filed a FINRA complaint against Respondent, but has reached a settlement and has released all claims against Respondent in the FINRA complaint.

8. On or about August 1, 2010, while employed by Merrill, Respondent personally invested in Madison Timber Properties ("Madison Timber"). In exchange for his investment, like other investors in Madison Timber, Respondent was given promissory notes and notarized timber deeds and cutting agreements.

9. Shortly thereafter, Respondent and Merrill completed an "Outside Business Activity History of Frank Zito" document. In the outside business disclosure, Respondent disclosed to Merrill that he owned "timber land" and that he would "hopefully profit when timber eventually sold." Respondent did not disclose, or cause to be disclosed, the name "Madison Timber," in this outside business activity disclosure.

10. In 2011, Respondent, after consulting Merrill management, introduced the principals of Madison Timber to a third-party law firm, because of Madison Timber's interest in a private placement offering.

11. Principals of the third-party law firm sold interests in Madison Timber and Madison Timber paid Respondent finders' fees from 2011 to 2018 totaling approximately \$130,000 as a result of the introduction. The receipt of these finders' fees was not disclosed to Merrill or on Respondent's U-4. In total, Respondent received \$227,750 in commissions and finders' fees from Madison Timber and/or related entities for sales of its securities. These commissions and finders' fees were not disclosed to Merrill.

12. From August 2010 until January 2014, although Respondent disclosed his outside business activity to Merrill each year, Respondent did not verify that Merrill was including his outside business activity in timber investment on the Form U-4 Merrill filed for Respondent. Merrill filed Form U-4 on behalf of Respondent on 11 different occasions during this period. Each U-4 filing was based on information given to Merrill by Respondent, and each time, Respondent had the opportunity to verify the accuracy of his U-4.

13. On January 27, 2014, Merrill filed a U-4 on Respondent's behalf through CRD, in which it answered "yes" to the outside business question, and entered these details:

(1)FOR PROFIT OR NOT FOR PROFIT: FOR-PROFIT  
ORGANIZATION NAME OF OUTSIDE BUSINESS

ORGANIZATION: FRANK ZITO INVESTMENT RELATED: N  
ADDRESS OF BUSINESS: MADISON, MISSISSIPPI 39110  
NATURE OF BUSINESS: OTHER,PURCHASE TIMBER FROM  
A TIMBER MANAGEMENT FIRM COMPENSATION FOR  
ACTIVITY: N POSITION, TITLE, ASSOCIATION: OWNER,  
START DATE OF RELATIONSHIP: 8/1/2010 NUMBER OF  
HOURS DEVOTED: 0 HOUR(S) ANNUALLY NUMBER OF  
HOURS DEVOTED DURING TRADING HOURS: 0 1DUTIES:  
TIMBER LAND GENERAL NOTES: 10/20/2010 10:30 ZITO,  
FRANK : SIMPLY OWN TIMBERLAND AND WILL  
HOPEFULLY PROFIT WHEN TIMBER EVENTUALLY SOLD.

14. Respondent's U-4 did not include the name "Madison Timber" in his January 27, 2014 Form U-4 outside business disclosure or any subsequent filings.

15. Approximately three years after his personal investment, Respondent discussed investment in Madison Timber with his client RF. After discussing the investment with Respondent, RF invested \$500,000 in Madison Timber. RF's initial investment in Madison Timber was made January 17, 2013 – one year before RF first caused his outside business activity in timber interests to be disclosed on his Form U-4.

16. Respondent was actively involved in RF's investment. Upon RF's request, Respondent brought documents to him to sign, delivered checks, and updated RF on payment schedules of the promissory notes. Over a 5-year period, RF made 15 different investments in Madison Timber, totaling \$5,000,000.

17. Within 10 days after RF had made his first investment with Madison Timber, Respondent received a check from Madison Timber in an amount equal to 2% of RF's investment. Respondent continued to receive commissions based on RF's investments with Madison Timber, and ultimately received commissions of approximately \$90,000.

18. The securities offered by Madison Timber were not approved by nor offered by Merrill and were not on the regular books or records of Merrill. The securities transactions effected by Respondent on RF's behalf were not authorized in writing by Merrill.

19. The Madison Timber securities were not registered with the Division and no exemption was claimed by Madison Timber for the securities at the time Respondent sold the securities to RF.

20. Respondent disclosed his outside business activities only in a "timber management firm" on his Form U-4 the January following RF's investment and Respondent receiving commissions. Respondent never reported that he effected securities transactions away from Merrill, or reported that he received commissions based on RF's investments in Madison Timber.

21. From January 2013 through 2018, while Respondent effected securities transactions by RF in Madison Timber, Respondent annually completed a "Branch Office Registered Employee Questionnaire – Detail Review" with Merrill. In each instance, Respondent answer "no" to the question of whether he had been "paid outside of the ML system by any client or third party for business conducted outside Merrill Lynch."

22. From January 2013 through 2018, while Respondent effected securities transactions by RF in Madison Timber, Respondent annually completed a “GWIM (Global Wealth & Investment Management) ANNUAL CERT AND HOLDINGS USWM” and certified that he had not “recommended or referred any offerings (including initial public offerings), sales, purchases, or private securities transactions which are not approved by, or sponsored by Bank of America and/or Merrill Lynch.”

#### **Madison Timber Ponzi Scheme**

23. On April 20, 2018, the Securities and Exchange Commission (“SEC”) filed a civil complaint against Madison Timber, and its principal, Arthur Lamar Adams, alleging that Madison Timber was a “Ponzi” scheme. On May 1, 2018, the United States Attorney filed a criminal indictment against Adams, charging him with wire and bank fraud in connection with a Ponzi scheme. Federal authorities froze all assets of Adams and Madison Timber, along with related entities. A receiver has been appointed to marshal assets and eventually distribute the assets to injured investors.

24. According to the civil and criminal complaints above, Adams created false timber deeds and cutting agreements to secure investments in Madison Timber, and caused notarizations to be falsified to perpetuate the scheme. Adams pleaded guilty to wire fraud on May 9, 2018.

25. According to the court-appointed receiver, all of the commissions paid for sales of Madison Timber securities were paid with money belonging to the receivership estate.

#### **Respondent’s Termination and Application**

26. On June 25, 2018, Merrill terminated Respondent’s employment. Respondent has a pending application for registration with the Division. Respondent submitted a Form U-4 on

August 6, 2018, and a U-4 Amendment on August 28, 2018. On each form, he discloses his outside business activity in the same manner as set forth above, not mentioning Madison Timber by name.

## **II. APPLICABLE LAW**

27. **Section 75-71-102** of the Act sets forth:

### **General Provisions**

“Administrator” means the Secretary of State.

“Agent” means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities.

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(4) “Broker-dealer” means a person engaged in the business of effecting transactions in securities for the account of others or for the person’s own account.

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(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing.

28. **Section 75-71-301** sets forth:

Securities registration requirement. It is unlawful for a person to offer or sell a security in this state unless: (1) The security is a federal covered security; (2) The security, transaction, or offer is exempted from registration under Sections 75-71-201 through 75-71-203; or (3) The security is registered under this chapter.

29. **Section 75-71-412** sets forth:

(a) **Disciplinary conditions-applicants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(b) **Disciplinary conditions-registrants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar function, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

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(d) **Grounds for discipline.** A person may be disciplined under subsection (a) through (c) if the person:

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(2) Willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous ten (10) years.

30. **Section 75-71-601(a)** of the Act states: "Administration. The administrator shall administer this chapter."

31. The Division may employ remedies set out in Miss. Code Ann. **Section 75-71-604** of the Act which sets forth:

**Administrative Enforcement.**

(a) *Issuance of an order or notice.* If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of

business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may:

(1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;

(2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under Section 75-71-401(b)(1)(D) or (F) or an investment adviser under Section 75-71-403(b)(1)(C); or

(3) Issue an order:

(A) Under Section 75-71-204;

(B) Imposing a civil penalty in the case of an issuer of registered securities, broker-dealer, investment advisor, agent, investment adviser representative, or other person who violated this chapter;

(C) Barring or suspending the person from association with a broker-dealer or investment advisor registered in this state; or

(D) Requiring the person to pay restitution for any loss or disgorge any profits arising from the violation, including interest.

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(d) *Civil Penalty.* In a final order under subsection (c), the administrator may impose a civil penalty in an amount set forth in Section 75-71-613 for each violation and each violation shall be considered a separate offense in a single proceeding or a series of related proceedings.

32. **Miss. Code Ann. Section 75-71-613(d)** sets forth:

**Amounts of civil and criminal penalties.**

(d) Amount of civil penalty and further civil penalty under Section 75-71-604--administrative enforcement

(1) The amount of the civil penalty described in Section 75-71-604(d) is a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each violation, provided that an additional civil penalty may be imposed up to a maximum of Fifteen Thousand Dollars

(\$15,000.00) for violations of the chapter committed against elders or disabled persons.

33. **Rule 5.21** sets forth:

Each broker-dealer and agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration, imposition of fines, or such other actions authorized by statute.

Broker-dealers

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(23) Violating any laws or rules of the SEC or a national securities exchange or any national securities association of which it is a member, or violating any federal or state securities law or any rule or regulation promulgated thereunder.

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Agents

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(2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction.

(6) Engaging in conduct specified in Subsections (A) (1), (2), (3), (4), (5), (6), (8), (11), (12), (16), (17), (18), (19), or (23) of this Rule.

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure, or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension, or revocation of registration, or imposition of fines.

34. **FINRA Rule 3280** sets forth:

Private Securities Transactions of an Associated Person

(a) Applicability

No person associated with a member shall participate in any manner in a private securities transaction except in accordance with the requirements of this Rule.

(b) Written Notice

Prior to participating in any private securities transaction, an associated person shall provide written notice to the member with

which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction; provided however that, in the case of a series of related transactions in which no selling compensation has been or will be received, an associated person may provide a single written notice.

### **III. CONCLUSIONS OF LAW**

35. The previous paragraphs are incorporated by this reference.
36. Respondent is a broker-dealer agent under Section 75-71-102(4) and is therefore bound by the Act and Rules.
37. Respondent is an investment adviser representative under Section 75-71-102(16) and is therefore bound by the Act and Rules
38. Respondent was associated with a FINRA broker-dealer, was registered with the Division, and was subject to the Act and Rules during the period within which the violations occurred.
39. Respondent violated Section 75-71-301 of the Act by selling unregistered nonexempt securities to his client RF.
40. Respondent violated Rule 5.21(B)(2) of the Act by effecting securities transactions in Madison Timber securities that were not recorded on the regular books or records of Merrill, and were not authorized in writing by Merrill.
41. Respondent willfully violated FINRA Rule 3780 which prohibits private securities transactions, by effecting transactions in Madison Timber securities. The FINRA Rule violation constitutes a violation of Rule 5.21(A)(23) of the Act, applied to a broker-dealer agent by Rule 5.21(B)(6). Respondent's willful violation of a FINRA Rule is grounds for suspension, denial of registration, and imposition of fines, pursuant to Section 75-71-412 and disgorgement of profit under Section 75-71-604 of the Act.

42. Respondent violated the "other conduct" provision of Rule 5.21 by his failure to disclose his selling away and commissions to Merrill by consistently answering negatively to questions about selling away in the "Branch Office Registered Employee Questionnaire and "GWIM ANNUAL CERT AND HOLDINGS USWM" forms presented to him annually by Merrill, and thus making material omissions and/or misrepresentations.

43. Pursuant to Miss. Code Ann. Section 75-71-412 and Rule 5.21(B)(6) and based on the improper actions of Respondent set forth above, the administrator has the authority to revoke, suspend, limit, condition, or deny Respondent's application to be a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative.

44. Pursuant to Miss. Code Ann. Sections 75-71-604 and 75-71-613 and Rule 5.21(B)(6), the Administrator has authority to impose an administrative penalty for each violation of the Act and/or Rules and to order disgorgement or restitution.

#### **IV. ORDER**

1. This Order concludes the open matter with the Division with respect to Respondent's conduct and activities as a broker-dealer agent and investment adviser representative with Merrill as set forth above. However, nothing herein limits the ability of the Division, individually or jointly with other agencies, in pursuing any investigation with respect to any other securities-related matter involving the Respondent.

2. This Order is entered into solely for the purpose of resolving the previously referenced allegations and is not intended to be used for any other purpose.

3. Prior to approval of Respondent's pending registration with the Division and the conclusion of this matter, Respondent shall fully and fairly comply with all of the following requirements:

- a. Respondent shall pay to Allysson L. Mills, the Receiver for the estate of the Receivership Defendants, Arthur Lamar Adams and Madison Timber Properties, LLC, disgorgement in the amount of \$100,000.00 within 10 days of the entry the Receiver's Order;
- b. Respondent shall pay to the Receiver additional disgorgement in the amount of \$100,000.00 within 180 days of the entry of the Receiver's Order, bringing the total amount of disgorgement to the Receiver to \$200,000.00;
- c. Within 180 days of the entry of this Order, Respondent shall complete six (6) hours of financial industry related training approved in advance by the Division, of which three (3) hours shall focus on the topic of compliance and three (3) hours shall focus on ethics; and provide evidence of completion of the required training to the Division.

4. In addition, the Division requires as a condition of Respondent's registration renewal with the Division that any firm hiring Respondent enter a separate Consent Order that places Respondent under a program of heightened supervision for a period of two years from the date of approval of Respondent's pending application with the Division. The separate order will set forth the terms of Respondent's heightened supervision.

5. Respondent shall not take any action, or make or permit to be made any public statement, denying, directly or indirectly, any finding in this Order or creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Administrator is not a party; and

6. Respondent shall fully, fairly, and truthfully disclose all information and produce all records and other evidence in its possession, custody, or control relevant to all inquiries made by the Division concerning the subject matter of this Order, except to the extent such inquiries call for the disclosure of information protected by the attorney-client and/or work product privileges.

7. Per the terms of Respondent's separate agreement with the Receiver, Respondent will cooperate and provide any assistance as may be reasonably requested by the Receiver, including, without limitation, appearing for interviews, depositions, or trial testimony as may be requested by the Receiver upon reasonable notice.

8. If Respondent defaults in any of his obligations set forth in this Order, the Division may vacate this Order, at its sole discretion, upon fifteen (15) days' notice to Respondent and without opportunity for administrative hearing and refer this matter for enforcement as provided in Section 75-71-604 (g) of the Act.

9. This Order is not intended to indicate that Respondent shall be subject to any disqualifications contained in the federal securities law, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states' securities laws. In addition, this Order is not intended to form the basis for any such disqualifications.

10. This Order contains, constitutes, and embodies the entire agreement between the undersigned, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Order; and this Order supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Order.

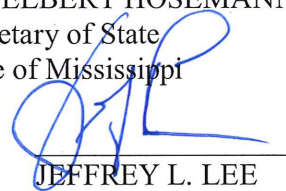
11. In the event that one or more provisions contained in this Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Order.

Date:

11/2/18

C. DELBERT HOSEMAN, JR.  
Secretary of State  
State of Mississippi

By:



JEFFREY L. LEE  
Senior Attorney  
Securities Division

### CONSENT TO ENTRY OF FINAL ORDER

Frank Howard Zito hereby acknowledges that he has been served with a copy of this Administrative Consent Order ("Order") has read this Order, is aware of his right to a hearing and appeal in this matter, and has waived the same.

Frank Howard Zito admits the jurisdiction of the Division and consents to entry of this Order by the Division solely for purposes of settlement.

Frank Howard Zito states that no promise of any kind or nature whatsoever was made to him to induce him to enter into this Order and that he has entered into this Order voluntarily.

Dated, this the 2<sup>nd</sup> day of November 2018.

FRANK HOWARD ZITO



STATE OF Louisiana  
Parish  
COUNTY OF Orleans

SUBSCRIBED AND SWORN TO before me, this the 2<sup>nd</sup> day of November 2018.



Notary Public

My commission expires: upon death

NADINE B. HAMMONDS  
Notary Public  
Parish of Orleans, State of Louisiana  
Notary Identification #8679  
My Commission is Issued for Life